merely "I disbelieve the evidence of the prosecution".... "I believe the evidence of the accused."

In a case of theft it is not necessary for an accused to convince the trial Magistrate of the truth of his explanation; it is sufficient if the explanation may reasonably be true even if the Magistrate is not convinced of its truth.

Rex v. Schama(1) applied.

Case referred to:—

(1) *Rex v. Schama,* 11 Cr. App. R. 45.

MAGISTRATE'S CRIMINAL APPEAL.

C. M. P. Pillai for the appellant.

Grattan-Bellew, Deputy Public Prosecutor, for the Public Prosecutor, Respondent.

Horne, J.—In this appeal the evidence of identification is unsatisfactory. The stolen bicycle dynamo and lamp are articles in common use and scratches resulting from use can hardly be accepted as distinguishing marks.

Further, having regard to the time elapsing between the theft and the identification viz. seven weeks, the presumption arising from recent possession can hardly apply.

Even if the goods are satisfactorily identified as having been stolen seven weeks beforehand then the explanation offered by the accused was not treated fairly by the Magistrate. It is not necessary for him to convince the Magistrate of the truth of his explanation; it is sufficient if the explanation may reasonably be true even if the Magistrate is not convinced of its truth—*Rex v. Schama,*(1). Moreover there was no evidence to rebut this explanation. The Magistrate's mind may have been affected by the evidence of Long Che bin Naim (Probationary Inspector). His evidence being a statement made in the course of the investigation was inadmissible as part of the evidence of the prosecution—(section 113 (i) Criminal Procedure Code).

There is no evidence of a dishonest retention of stolen property. The conviction is quashed.

It does not appear to me that a Magistrate complies with section 307 (iii) of the Criminal Procedure Code which requires him to give the "Grounds of Decision" by stating "I believe the evidence of the prosecution" . . . . "I disbelieve the evidence of the accused." I think the Magistrate should state, except in the simplest of cases and they usually are not the subject of appeal, the reasons why he believed or disbelieved the evidence in question.

Conviction quashed.

JOHORE REPORT.

[ORIGINAL CIVIL JURISDICTION]
MILLS, J.
October 11, 1936.

VANA NAVANA SOONA SOCKALINGAM CHETTIAR ..... Plaintiff

vs.

CHONG HEE BOON ..... Defendant.

[BATU PAHAT CIVIL SUIT No. 30 of 1935]

Practice—Civil Procedure Code: Section 81—Substituted Service—To be allowed only when defendant within jurisdiction at date of issue of summons.

Before the Court orders substituted service under section 81 (1) of the Civil Procedure Code, it must be satisfied on two points, viz:—

(1) that the defendant at the date of issue of the Summons was resident within the State, and

(2) either (a) that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or (b) that for any other reason the Summons cannot be served in the ordinary way.

SUMMONS-IN-CHAMBERS.

The plaintiff applied for substituted service of the Summons under section 81 of the Civil Procedure Code and his application was dismissed by the Assistant Registrar. The plaintiff appealed to the Judge.

Demuth for plaintiff (*Ex Parte*).

Cur. Adv. Vult.

Mills, J.—On application being made for the substituted service of the summons in this suit, the Assistant Registrar at Batu Pahat dismissed the application on the ground that he was not satisfied that at the date of the issue of the summons the defendant was resident within the State. Counsel for the plaintiff appeals to the Judge on the ground that on a proper construction of Section 81 of the Civil Procedure Code, it is not necessary to prove that at the date of the issue of the summons the defendant was resident within the State.

I have therefore to interpret that Section.

It reads as follows:—

"(1) Where the Court is satisfied that the defendant at the date of issue of the summons was resident within the Federated Malay States, and that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served, the Court shall order...."

There are two possible interpretations.

The first is this:

The Court must be satisfied on two points;

i.e. (a) that the defendant at the date of issue of the summons was resident within the Federated Malay States,

and (b) either

(i) that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service,

or (ii) that for any other reason the summons cannot be served.

The second is this:

The order is to be made in one of two eventualities: the first eventuality is this:

When the Court is satisfied on two points; viz:

(c) that the defendant at the date of issue of the summons was resident within the Federated Malay States,

and

(d) that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service:

the second eventuality is this:

When the Court is satisfied that for any other reason the summons cannot be served.

In my opinion the former interpretation is correct: i.e. the order can only be made if the Court is satisfied as in (A) and (B) (i) or (ii).

In other words, the Court must always be satisfied that the defendant at the date of issue of the summons was resident within the State.

Three reasons lead me to this conclusion.

The first reason is this:

Before 1933 the section read—

"Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the usual way, the Court shall order...."

I paraphrase that as follows:—

The Court must be satisfied that the summons cannot be served in the usual way, because either—

(i) the defendant is keeping out of the way, or

(ii) for any other reason.

By Enactment No. 25 of 1933, the Legislature required that an additional condition should be fulfilled; namely, the Court must be satisfied that the defendant at the date of issue of the summons was resident within the jurisdiction.

I can see no logical reason why that condition should be required only if the defendant was keeping out of the way, and not if service was impossible for some other reason.

The Court ought to presume that the Legislature has acted logically and not capriciously.

In my opinion, therefore, the Court ought to hold that this additional requirement must be fulfilled in both cases.

The second reason is this:—

According to sub-section (vi) of Section 81, the order referred to in sub-section (v) may be made whether the defendant is believed to be resident within or without the jurisdiction, notwithstanding anything contained in sub-section (i). I paraphrase the legal provision as follows:—

Although sub-section (i) says that the Court must be satisfied that the defendant resides within the jurisdiction, yet if the suit relates to land within the jurisdiction, the Court may order service under sub-section (v) although the defendant is believed to reside outside the jurisdiction.

If that paraphrase is correct, sub-section (i) must be interpreted as requiring that the defendant must reside within the jurisdiction.

My third reason is this:—

When the Legislature legislates according to this formula,

"You must prove that (X), and that (Y), or that (Z)," it appears to me that the ordinary and natural interpretation is

"You must prove that (X) and that either (Y) or (Z)." If the Legislature had intended otherwise, it would in my opinion have split up the sentence into clauses as in Section 78: that is, the Legislature would have enacted

"You must prove

(a) that (X) and that (Y), or

(b) that (Z)."

For these reasons I rule that where an application is made under Section 81, it is always necessary to satisfy the Court that the defendant at the date of issue of the summons was resident within the jurisdiction.

In my opinion the interpretation of the Assistant Registrar was correct.

I may add that the same view is taken by the Registrar of the Supreme Court at Kuala Lumpur, that is, in the jurisdiction where this legislation originated.

I dismiss the appeal.

Appeal dismissed.

Solicitors for the appellant-plaintiff—*Shelley-Thompson & Demuth.*